



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0617/P  
PJK&TJD:jld:ph

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TODAY please

DOA:.....Iwata, BB0260 – Estate recovery for Medical Assistance

**FOR 2013-2015 BUDGET – NOT READY FOR INTRODUCTION**

(in 2-1)  
D-note

do not  
generate

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AN ACT; relating to: the budget. ✓

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MEDICAL ASSISTANCE**

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the <sup>✓</sup>state fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

- 2 SECTION 1. 20.435 (4) (im) of the statutes is amended to read:
- 3 20.435 (4) (im) *Medical assistance; correct payment recovery; collections; other*
- 4 *recoveries.* All moneys received from the recovery of correct medical assistance
- 5 payments under ss. 49.496 and 867.035 and rules promulgated under s. 46.286 (7),
- 6 49.848, and 49.849, all moneys received as collections and other recoveries from

1 providers, drug manufacturers, and other 3rd parties under medical assistance  
2 performance-based contracts, and all moneys credited to this appropriation account  
3 under s. 49.89 (7) (f), for payments to counties and tribal governing bodies under s.  
4 49.496 (4) (a), for payment of claims under s. ~~867.035 (3)~~ 49.849 (5), for payments to  
5 the federal government for its share of medical assistance benefits recovered, for the  
6 state share of medical assistance benefits provided under subch. IV of ch. 49, and for  
7 costs related to collections and other recoveries.

8 **SECTION 2.** 20.435 (4) (in) of the statutes is amended to read:

9 20.435 (4) (in) *Community options program; family care; recovery of costs*  
10 *administration.* From the moneys received from the recovery of costs of care under  
11 ss. 46.27 (7g) and ~~867.035 and under rules promulgated under s. 46.286 (7), 49.848,~~  
12 and 49.849 for enrollees who are ineligible for medical assistance, the amounts in the  
13 schedule for administration of the recovery of costs of the care.

14 **SECTION 3.** 20.435 (7) (im) of the statutes is amended to read:

15 20.435 (7) (im) *Community options program; family care benefit; recovery of*  
16 *costs; birth to 3 waiver administration.* From the moneys received from the recovery  
17 of costs of care under ss. 46.27 (7g) and ~~867.035 and under rules promulgated under~~  
18 ~~s. 46.286 (7), 49.848, and 49.849~~ for enrollees who are ineligible for medical  
19 assistance, all moneys not appropriated under sub. (4) (in), and all moneys  
20 transferred to this appropriation account from the appropriation account under sub.  
21 (4) (o), for payments to county departments and aging units under s. 46.27 (7g) (d),  
22 payments to care management organizations for provision of the family care benefit  
23 under s. 46.284 (5), payment of claims under s. ~~867.035 (3)~~ 49.849 (5), payments for  
24 long-term community support services funded under s. 46.27 (7) as provided in ss.

1 46.27 (7g) (e) and 867.035-(4m) 49.849 (6) (b), and for administration of the waiver  
2 program under s. 46.99.

3 **SECTION 4.** 46.27 (7g) (a) 1m. of the statutes is created to read:

4 46.27 (7g) (a) 1m. "Decedent" means a deceased client or a deceased nonclient  
5 surviving spouse, whichever is applicable.

6 **SECTION 5.** 46.27 (7g) (a) 4. of the statutes is created to read:

7 46.27 (7g) (a) 4. "Nonclient surviving spouse" means any person who was  
8 married to a client while the client was receiving services for which the cost may be  
9 recovered under par. (c) 1. and who survived the client.

10 **SECTION 6.** 46.27 (7g) (a) 5. of the statutes is created to read:

11 46.27 (7g) (a) 5. a. "Property of a decedent" means all real and personal  
12 property to which the client held any legal title or in which the client had any legal  
13 interest immediately before death, to the extent of that title or interest, including  
14 assets transferred to a survivor, heir, or assignee through joint tenancy, tenancy in  
15 common, survivorship, life estate, living trust, or any other arrangement.

16 b. Notwithstanding subd. 5. a., "property of a decedent" includes <sup>all</sup> ~~any~~ real  
17 <sup>and personal</sup> property in which the nonclient surviving spouse had an ownership interest at the  
18 client's death and in which the client had a marital property interest with that  
19 nonclient surviving spouse at any time within 5 years before the client applied for  
20 long-term community support services funded under sub. (7) or during the time that  
21 the client was eligible for long-term community support services funded under sub.  
22 (7).

23 **SECTION 7.** 46.27 (7g) (c) 1. of the statutes is amended to read:

24 46.27 (7g) (c) 1. Except as provided in subd. 4., the department shall file a claim  
25 against the estate of a client ~~or, and~~ against the estate of the a nonclient surviving

1 spouse of a client, for the amount of long-term community support services funded  
2 under sub. (7) paid on behalf of the client after the client attained 55 years of age,  
3 unless already recovered by the department under this subsection.

4 **SECTION 8.** 46.27 (7g) (c) 2m. of the statutes is created to read:

5 46.27 (7g) (c) 2m. a. Property that is subject to the department's claim under  
6 subd. 1. in the estate of a client or in the estate of a nonclient surviving spouse is all  
7 property of a decedent that is included in the estate.

8 b. There is a presumption, which may be rebutted by clear and convincing  
9 evidence, that all property in the estate of the nonclient surviving spouse was marital  
10 property held with the client and that 100 percent of the property in the estate of the  
11 nonclient surviving spouse is subject to the department's claim under subd. 1.

12 **SECTION 9.** 46.27 (7g) (c) 3. (intro.) of the statutes is amended to read:

13 46.27 (7g) (c) 3. (intro.) The court shall reduce the amount of a claim under  
14 subd. 1. by up to the amount specified in s. 861.33 (2) if necessary to allow the client's  
15 decedent's heirs or the beneficiaries of the client's decedent's will to retain the  
16 following personal property:

17 **SECTION 10.** 46.27 (7g) (c) 5. a. of the statutes is amended to read:

18 46.27 (7g) (c) 5. a. If the department's claim is not allowable because of subd.  
19 4. and the estate includes an interest in real property, including a home, the court  
20 exercising probate jurisdiction shall, in the final judgment or summary findings and  
21 order, assign the interest in the ~~home~~ real property subject to a lien in favor of the  
22 department for the amount described in subd. 1. The personal representative or  
23 petitioner for summary settlement or summary assignment of the estate shall record  
24 the final judgment as provided in s. 863.29, 867.01 (3) (h), or 867.02 (2) (h).

25 **SECTION 11.** 46.27 (7g) (c) 5. b. of the statutes is amended to read:

1           46.27 (7g) (c) 5. b. If the department's claim is not allowable because of subd.  
2           4., the estate includes an interest in real property, including a home, and the personal  
3           representative closes the estate by sworn statement under s. 865.16, the personal  
4           representative shall stipulate in the statement that the ~~home~~ real property is  
5           assigned subject to a lien in favor of the department for the amount described in subd.  
6           1. The personal representative shall record the statement in the same manner as  
7           described in s. 863.29, as if the statement were a final judgment.

8           **SECTION 12.** 46.27 (7g) (c) 6. (intro.) of the statutes is amended to read:

9           46.27 (7g) (c) 6. (intro.) The department may not enforce ~~the a~~ lien under subd.  
10          5. as long as any of the following survive the decedent:

11          **SECTION 13.** 46.27 (7g) (g) of the statutes is amended to read:

12          46.27 (7g) (g) The department shall promulgate rules establishing standards  
13          for determining whether the application of this subsection would work an undue  
14          hardship in individual cases. If the department determines that the application of  
15          this subsection would work an undue hardship in a particular case, the department  
16          shall waive application of this subsection in that case. This paragraph does not apply  
17          with respect to claims against the estates of nonclient surviving spouses.

18          **SECTION 14.** 46.286 (7) of the statutes is amended to read:

19          46.286 (7) **RECOVERY OF FAMILY CARE BENEFIT PAYMENTS; RULES.** The department  
20          shall ~~promulgate rules relating~~ apply to the recovery from persons who receive the  
21          family care benefit, including by liens and affidavits and from estates, of correctly  
22          and incorrectly paid family care benefits, ~~that are substantially similar to the~~  
23          applicable provisions under ss. 49.496 and 49.497, 49.848, and 49.849.

24          **SECTION 15.** 46.287 (2) (a) 1. k. of the statutes is amended to read:

Insert 5-10 ✓

1           46.287 (2) (a) 1. k. Recovery of family care benefit payments under s. 46.286  
2       (7).

3           **SECTION 16.** 49.496 (1) (a) of the statutes is renumbered 49.496 (1) (ah).

4           **SECTION 17.** 49.496 (1) (af) of the statutes is created to read:

5           49.496 (1) (af) “Decedent” means a deceased recipient or a deceased  
6 nonrecipient surviving spouse, whichever is applicable.

7           **SECTION 18.** 49.496 (1) (bk) of the statutes is created to read:

8           49.496 (1) (bk) “Long-term care program” means any of the following:

9           1. The family care program providing the benefit under s. 46.286.

10          2. The self-directed services option that operates under a waiver from the  
11 secretary of the federal department of health and human services under 42 USC  
12 1396n (c) in which an enrolled individual selects his or her own services and service  
13 providers.

14          3. The family care partnership program that is an integrated health and  
15 long-term care program operated under an amendment to the state medical  
16 assistance plan under 42 USC 1396u-2 and a waiver under 42 USC 1396n (c).

17          4. The program for all-inclusive care for the elderly under 42 USC 1396u-4.

18          5. Any program that provides long-term care services and is operated by the  
19 department under an amendment to the state medical assistance plan under 42 USC  
20 1396n (i) or 42 USC 1396u-2; a waiver of medical assistance laws under 42 USC  
21 1396n (c), 42 USC 1396n (b) and (c), or 42 USC 1396u; or a demonstration project  
22 under 42 USC 1315 or 42 USC 1396n (c).

23          **SECTION 19.** 49.496 (1) (bw) of the statutes is created to read:

1           49.496 (1) (bw) "Nonrecipient surviving spouse" means any person who was  
2           married to a recipient while the recipient was receiving services for which the cost  
3           may be recovered under sub. (3) (a) and who survived the recipient.

4           **SECTION 20.** 49.496 (1) (cm) of the statutes is created to read:

5           49.496 (1) (cm) 1. "Property of a decedent" means all real and personal property  
6           to which the recipient held any legal title or in which the recipient had any legal  
7           interest immediately before death, to the extent of that title or interest, including  
8           assets transferred to a survivor, heir, or assignee through joint tenancy, tenancy in  
9           common, survivorship, life estate, living trust, or any other arrangement.

10           2. Notwithstanding subd. 1., "property of a decedent" includes <sup>all</sup> ~~any~~ real  
11           <sup>and personal</sup> property in which the nonrecipient surviving spouse had an ownership interest at  
12           the recipient's death and in which the recipient had a marital property interest with  
13           that nonrecipient surviving spouse at any time within 5 years before the recipient  
14           applied for medical assistance or during the time that the recipient was eligible for  
15           medical assistance.

16           **SECTION 21.** 49.496 (3) (a) (intro.) of the statutes is amended to read:

17           49.496 (3) (a) (intro.) Except as provided in par. (b), the department shall file  
18           a claim against the estate of a recipient, and against the estate of a nonrecipient  
19           surviving spouse, for all of the following, subject to the exclusion of any amounts  
20           under the Long-Term Care Partnership Program established under s. 49.45 (31),  
21           unless already recovered by the department under this section:

22           **SECTION 22.** 49.496 (3) (a) 2. a. of the statutes is amended to read:

23           49.496 (3) (a) 2. a. Home-based or community-based services under 42 USC  
24           1396d (a) (7) and (8) ~~and under any waiver granted under 42 USC 1396n (e) (4) (B)~~  
25           ~~or 42 USC 1396u.~~

1       **SECTION 23.** 49.496 (3) (a) 2. am. of the statutes is created to read:

2       49.496 (3) (a) 2. am. All services provided to an individual while the individual  
3       is participating in a long-term care program.

4       **SECTION 24.** 49.496 (3) (a) 2. b. of the statutes is repealed.

5       **SECTION 25.** 49.496 (3) (a) 2. c. of the statutes is repealed.

6       **SECTION 26.** 49.496 (3) (ad) of the statutes is created to read:

7       49.496 (3) (ad) The amount the department may claim against an estate of a  
8       recipient, or an estate of a nonrecipient surviving spouse, for services that are  
9       described under par. (a) 2. am. and that are provided by a managed long-term care  
10      program funded by capitated payments is equal to the amount of the capitated  
11      payment for the recipient.

12      **SECTION 27.** 49.496 (3) (aj) of the statutes is created to read:

13      49.496 (3) (aj) 1. Property that is subject to the department's claim under par.  
14      (a) in the estate of a recipient or in the estate of a nonrecipient surviving spouse is  
15      all property of a decedent that is included in the estate.

16      2. There is a presumption, which may be rebutted by clear and convincing  
17      evidence, that all property in the estate of a nonrecipient surviving spouse was  
18      marital property held with the recipient and that 100 percent of the property in the  
19      estate of the nonrecipient surviving spouse is subject to the department's claim  
20      under par. (a).

21      **SECTION 28.** 49.496 (3) (am) (intro.) of the statutes is amended to read:

22      49.496 (3) (am) (intro.) The court shall reduce the amount of a claim under par.  
23      (a) by up to the amount specified in s. 861.33 (2) if necessary to allow the recipient's  
24      decedent's heirs or the beneficiaries of the ~~recipient's~~ decedent's will to retain the  
25      following personal property:



1           **SECTION 29.** 49.496 (3) (c) 1. of the statutes is amended to read:

2           49.496 (3) (c) 1. If the department's claim is not allowable because of par. (b)  
3           and the estate includes an interest in any real property, including a home, the court  
4           exercising probate jurisdiction shall, in the final judgment or summary findings and  
5           order, assign the interest in the ~~home~~ real property subject to a lien in favor of the  
6           department for the amount described in par. (a). The personal representative or  
7           petitioner for summary settlement or summary assignment of the estate shall record  
8           the final judgment as provided in s. 863.29, 867.01 (3) (h), or 867.02 (2) (h).

9           **SECTION 30.** 49.496 (3) (c) 2. of the statutes is amended to read:

10          49.496 (3) (c) 2. If the department's claim is not allowable because of par. (b),  
11          the estate includes an interest in any real property, including a home, and the  
12          personal representative closes the estate by sworn statement under s. 865.16, the  
13          personal representative shall stipulate in the statement that the ~~home~~ real property  
14          is assigned subject to a lien in favor of the department for the amount described in  
15          par. (a). The personal representative shall record the statement in the same manner  
16          as described in s. 863.29, as if the statement were a final judgment.

17          **SECTION 31.** 49.496 (3) (d) (intro.) of the statutes is amended to read:

18          49.496 (3) (d) (intro.) The department may not enforce ~~the~~ a lien under par. (c)  
19          as long as any of the following survive the decedent:

20          **SECTION 32.** 49.496 (6m) of the statutes is amended to read:

21          49.496 (6m) **WAIVER DUE TO HARDSHIP.** The department shall promulgate rules  
22          establishing standards for determining whether the application of this section would  
23          work an undue hardship in individual cases. If the department determines that the  
24          application of this section would work an undue hardship in a particular case, the  
25          department shall waive application of this section in that case. This subsection does

✓  
Insert 9-19

1 not apply with respect to claims against the estates of nonrecipient surviving  
2 spouses.

3 SECTION 33. 49.4962 of the statutes is created to read:

4 **49.4962 Voiding certain transfers of real property. (1) DEFINITIONS.** In  
5 this section:

6 (a) “Conveyance” has the meaning given in s. 706.01 (4).

7 (b) “Fair market value” means the price that a willing buyer would pay a willing  
8 seller for the purchase of real property.

9 (c) “Fraudulent transfer” means any of the following:

10 1. A transfer of title to real property for less than fair market value.

11 2. A transfer of title to real property by a conveyance that is not recorded during  
12 the lifetime of the grantor in the office of the register of deeds of the county in which  
13 the real property is located.

14 (d) “Grantee” has the meaning given in s. 706.01 (6).

15 (e) “Grantor” has the meaning given in s. 706.01 (6).

16 (2) VOIDABLE TRANSFERS. (a) A transfer of real property to which all of the  
17 following apply is voidable by the department:

18 1. The transfer was made by a grantor who was receiving or who received  
19 medical assistance, or by someone on his or her behalf, during the time that the  
20 grantor was eligible for medical assistance.

21 2. The department was not notified and was unaware that the transfer was  
22 made.

23 3. The transfer was made to hinder, delay, or defraud the department from  
24 recovering medical assistance benefits that were paid on behalf of the grantor.

(b) The department may commence an action in circuit court against the grantee to void the transfer. If the court voids the transfer, the title to the real property reverts to the grantor or his or her estate.

(3) PRESUMPTION. There is a presumption, which may be rebutted by clear and convincing evidence, that a transfer described in sub. (2) (a) 1. that is a fraudulent transfer was made to hinder, delay, or defraud the department from recovering medical assistance benefits that were paid on behalf of the grantor.

(4) BURDEN OF PROOF. With respect to a transfer under sub. (1) (c) 1., the burden of proof for establishing fair market value is on the grantee. Fair market value must be established through a credible methodology, which may include an appraisal performed by a licensed appraiser.

(5) INAPPLICABLE TO PURCHASER IN GOOD FAITH. Subsection (2) does not apply if, after the transfer described in sub. (2), the real property was transferred by a conveyance to a purchaser in good faith and for a valuable consideration and the conveyance was recorded.

(6) APPLICABILITY. This section applies to any of the following transfers of real property:

(a) A transfer that is made on or after the date that is 90 days after the effective date of this paragraph .... [LRB inserts date].

(b) A transfer that was made before the date that is 90 days after the effective date of this paragraph .... [LRB inserts date], if the grantor is receiving medical

assistance on, or receives medical assistance after, the date that is 90 days after the effective date of this paragraph .... [LRB inserts date].

SECTION 34. 49.682 (1) (am) of the statutes is created to read:

1           49.682 (1) (am) "Decedent" means a deceased client or a deceased nonclient  
2 surviving spouse, whichever is applicable.

3           **SECTION 35.** 49.682 (1) (d) of the statutes is created to read:

4           49.682 (1) (d) "Nonclient surviving spouse" means any person who was married  
5 to a client while the client was receiving services for which the cost may be recovered  
6 under sub. (2) (a) and who survived the client.

7           **SECTION 36.** 49.682 (1) (e) of the statutes is created to read:

8           49.682 (1) (e) 1. "Property of a decedent" means all real and personal property  
9 to which the client held any legal title or in which the client had any legal interest  
10 immediately before death, to the extent of that title or interest, including assets  
11 transferred to a survivor, heir, or assignee through joint tenancy, tenancy in common,  
12 survivorship, life estate, living trust, or any other arrangement.

13           2. Notwithstanding subd. 1., "property of a decedent" includes <sup>3 → all ✓</sup> ~~any~~ real  
14 <sup>→ and personal</sup> property in which the nonclient surviving spouse had an ownership interest at the  
15 client's death and in which the client had a marital property interest with that  
16 nonclient surviving spouse at any time within 5 years before the client applied for  
17 aid under s. 49.68, 49.683, or 49.685 or during the time that the recipient was eligible  
18 for aid under s. 49.68, 49.683, or 49.685.

19           **SECTION 37.** 49.682 (2) (a) of the statutes is amended to read:

20           49.682 (2) (a) Except as provided in par. (d), the department shall file a claim  
21 against the estate of a client ~~or, and~~ against the estate of ~~the~~ a nonclient surviving  
22 spouse ~~of a client,~~ for the amount of aid under s. 49.68, 49.683, or 49.685 paid to or  
23 on behalf of the client.

24           **SECTION 38.** 49.682 (2) (bm) of the statutes is created to read:

1           49.682 (2) (bm) 1. Property that is subject to the department's claim under par.  
2           (a) in the estate of a client or in the estate of a nonclient surviving spouse is all  
3           property of a decedent that is included in the estate.

4           2. There is a presumption, which may be rebutted by clear and convincing  
5           evidence, that all property in the estate of the nonclient surviving spouse was marital  
6           property held with the client and that 100 percent of the property in the estate of the  
7           nonclient surviving spouse is subject to the department's claim under par. (a).

8           **SECTION 39.** 49.682 (2) (c) (intro.) of the statutes is amended to read:

9           49.682 (2) (c) (intro.) The court shall reduce the amount of a claim under par.  
10          (a) by up to the amount specified in s. 861.33 (2) if necessary to allow the client's  
11          decedent's heirs or the beneficiaries of the client's decedent's will to retain the  
12          following personal property:

13          **SECTION 40.** 49.682 (2) (e) 1. of the statutes is amended to read:

14          49.682 (2) (e) 1. If the department's claim is not allowable because of par. (d)  
15          and the estate includes an interest in real property, including a home, the court  
16          exercising probate jurisdiction shall, in the final judgment or summary findings and  
17          order, assign the interest in the ~~home~~ real property subject to a lien in favor of the  
18          department for the amount described in par. (a). The personal representative or  
19          petitioner for summary settlement or summary assignment of the estate shall record  
20          the final judgment as provided in s. 863.29, 867.01 (3) (h), or 867.02 (2) (h).

21          **SECTION 41.** 49.682 (2) (e) 2. of the statutes is amended to read:

22          49.682 (2) (e) 2. If the department's claim is not allowable because of par. (d),  
23          the estate includes an interest in real property, including a home, and the personal  
24          representative closes the estate by sworn statement under s. 865.16, the personal  
25          representative shall stipulate in the statement that the ~~home~~ real property is

1 assigned subject to a lien in favor of the department for the amount described in par.  
2 (a). The personal representative shall record the statement in the same manner as  
3 described in s. 863.29, as if the statement were a final judgment.

4 **SECTION 42.** 49.682 (2) (f) (intro.) of the statutes is amended to read:

5 49.682 (2) (f) (intro.) The department may not enforce ~~the~~ a lien under par. (e)  
6 as long as any of the following survive the decedent:

7 **SECTION 43.** 49.682 (3) of the statutes is amended to read:

8 49.682 (3) The department shall administer the program under this section  
9 and may contract with an entity to administer all or a portion of the program,  
10 including gathering and providing the department with information needed to  
11 recover payment of aid provided under s. 49.68, 49.683, or 49.685. All funds received  
12 under this subsection, net of any amount claimed under s. ~~867.035-(3)~~ 49.849 (5),  
13 shall be remitted for deposit in the general fund.

14 **SECTION 44.** 49.682 (4) (b) <sup>u</sup> of the statutes is amended to read:

15 49.682 (4) (b) The department may file a claim under sub. (2) to recover against  
16 the property of a decedent only with respect to a client who dies after September 1,  
17 1995 the date that is 90 days after the effective date of this paragraph .... [LRB inserts  
18 date].

19 **SECTION 45.** 49.682 (5) of the statutes is amended to read:

20 49.682 (5) The department shall promulgate rules establishing standards for  
21 determining whether the application of this section would work an undue hardship  
22 in individual cases. If the department determines that the application of this section  
23 would work an undue hardship in a particular case, the department shall waive  
24 application of this section in that case. This subsection does not apply with respect  
25 to claims against the estates of nonclient surviving spouses.

✓ Insert 14-6  
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1           **SECTION 46.** 49.848 of the statutes is created to read:

2           **49.848 Treatment of real property owned by certain public assistance**  
3 **recipients. (1) DEFINITIONS.** In this section:

4           (a) "Department" means the department of health services.

5           (b) "Public assistance" means any services provided as a benefit under a  
6 long-term care program, as defined in s. 49.496 (1) (bk), that may be recoverable  
7 under s. 49.496 (3) (a); medical assistance under subch. IV that may be recoverable  
8 under s. 49.496 (3) (a); long-term community support services funded under s. 46.27  
9 (7) that may be recoverable under s. 46.27 (7g) (c) 1.; or aid under s. 49.68, 49.683,  
10 or 49.685 that may be recoverable under s. 49.682 (2) (a).

11           (c) "Recipient" means a person who received public assistance.

12           **(2) CREATION OF DOCUMENTS FOR RECORDING.** The department shall create all of  
13 the following for recording in the office of the register of deeds in the real estate  
14 records index:

15           (a) A document entitled "REQUEST FOR NOTICE OF TRANSFER OR  
16 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM," which shall require  
17 notice to the department with respect to any transfer of title to, placement of an  
18 encumbrance on, or termination of an interest in, the property to which the document  
19 relates and which shall provide notice that the department may have a claim against  
20 the property to which the document relates on the basis of providing public  
21 assistance to an individual who has or had a legal interest in the property.

→ **\*\*\*\*NOTE:** I didn't require parties to disclose or notify the department in this  
paragraph, as suggested, because this paragraph is intended to be just a description of  
the document and the parties are required to disclose or notify the department in  
proposed s. 49.848 (3m) and (4).

22           (b) A document entitled "TERMINATION OF REQUEST FOR NOTICE OF  
23 TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM," which

1 shall provide notice that, with respect to property against which a REQUEST FOR  
2 NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL  
3 CLAIM has been recorded, no notice to the department is required when title to the  
4 property is transferred, an encumbrance is placed on the property, or an interest in  
5 the property is terminated.

6 (c) A document entitled "CERTIFICATE OF CLEARANCE," which shall  
7 provide notice that, with respect to property against which a REQUEST FOR  
8 NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL  
9 CLAIM has been recorded, but against which a TERMINATION OF REQUEST FOR  
10 NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL  
11 CLAIM has not been recorded, no notice to the department is required when title to  
12 the property is transferred, an encumbrance is placed on the property, or an interest  
13 in the property is terminated. ✓ and the department will not be  
pursuing a claim for recovery of public

\*\*\*NOTE: The above two documents are described as doing the exact same thing.  
Is this okay? Maybe one document is sufficient.

14 (3) RECORDING OF REQUEST FOR NOTICE AND TERMINATION OF REQUEST FOR NOTICE.

15 (a) 1. Whenever an individual becomes eligible for public assistance, the department  
16 may record a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND  
17 NOTICE OF POTENTIAL CLAIM if the individual has any of the following  
18 ownership interests in real property:

19 a. A current ownership interest in real property, including a marital property  
20 interest.

21 b. At any time within 5 years before the individual applied for public assistance,  
22 a marital property interest in real property with his or her current spouse, if that  
23 spouse currently holds title to the real property.

✓ or during the time that the individual  
is eligible for public assistance

✓ and at any time during the time that an individual  
is eligible for public assistance



\*\*\*\*NOTE: I limited this to the spouse's ownership of the property because, if the recipient still has a marital property interest in the property, it would come under subd. 1. a. above.

\*\*\*\*NOTE: This is limited to the 5 years *before application* because, as drafted, this applies when an individual is determined to be eligible. If you prefer, it can be drafted so that DHS records the document when an individual is determined to be eligible *and* at any time during the period that the individual is eligible.

1           2. The department shall record the document in the office of the register of  
2       deeds of the county in which the real property under subd. 1. a. or b., whichever is  
3       applicable, is located.

4           3. In this paragraph, an interest in real property includes a vendee's or vendor's  
5       interest in a land contract or an interest in real property held in a revocable trust.

6           (b) Whenever the department determines that, with respect to property  
7       against which a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE  
8       AND NOTICE OF POTENTIAL CLAIM has been recorded, the department no  
9       longer requires notice when title to the property is transferred, an encumbrance is  
10      placed on the property, or an interest in the property is terminated, the department  
11      shall record a TERMINATION OF REQUEST FOR NOTICE OF TRANSFER OR  
12      ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM in the office of the  
13      register of deeds of the county in which the REQUEST FOR NOTICE OF  
14      TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM with  
15      respect to the property was recorded.

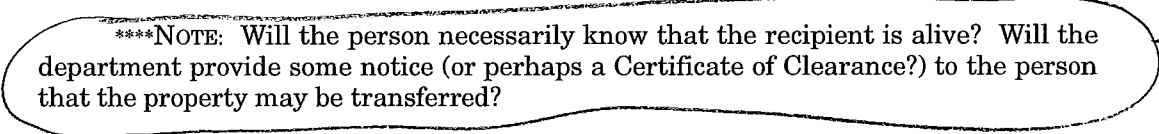

←           \*\*\*\*NOTE: This is pretty vague, since it does not provide any reason for why the  
              department would make this determination. Is it possible to specify when the  
              department would do this, or are the reasons potentially too numerous or indefinite to  
              specify?

16           **(3m)** DISCLOSURE OF REQUEST FOR NOTICE. If, in the course of a title search on  
17       real property, a title insurance company or agent finds that a REQUEST FOR  
18       NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL  
19       CLAIM has been recorded against the property but a TERMINATION OF

1 REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF  
2 POTENTIAL CLAIM has not been recorded against the property, the title insurance  
3 company or agent shall disclose that a REQUEST FOR NOTICE OF TRANSFER OR  
4 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has been recorded  
5 against the property in any report submitted preliminary to issuing, or in any  
6 commitment to offer, a certificate of title insurance for the real property.

7 (4) TRANSFERRING, ENCUMBERING, OR TERMINATING AN INTEREST IN PROPERTY;  
8 CLEARANCE BY THE DEPARTMENT. (a) Any person transferring title to, encumbering, or  
9 terminating an interest in, property against which a REQUEST FOR NOTICE OF  
10 TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has  
11 been recorded, but against which a TERMINATION OF REQUEST FOR NOTICE  
12 OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has  
13 not been recorded, shall notify the department of the proposed transfer,  
14 encumbrance, or termination of interest.

15 (b) If, on the date that the person sends the notice under par. (a), the recipient  
16 who had the ownership interest in the property when the department recorded the  
17 REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF  
18 POTENTIAL CLAIM is alive, the person may transfer title to, encumber, or  
19 terminate an interest in, the property with no further action by the department.

→   **\*\*\*NOTE:** Will the person necessarily know that the recipient is alive? Will the department provide some notice (or perhaps a Certificate of Clearance?) to the person that the property may be transferred?

20 (c) If, on the date that the person sends the notice under par. (a), the recipient  
21 who had the ownership interest in the property when the department recorded the  
22 REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF  
23 POTENTIAL CLAIM is deceased, all of the following apply:

1           1. The department shall determine whether it has a claim against the property  
2           for amounts paid on behalf of the recipient that are recoverable under s. 46.27 (7g)  
3           (c) 1., 49.496 (3) (a), or 49.682 (2) (a).

4           2. If the department determines that it has no claim under subd. 1., the  
5           department shall issue to the person seeking to transfer title to, encumber, or  
6           terminate an interest in, the real property a CERTIFICATE OF CLEARANCE,  
7           which the person shall record along with the instrument transferring title to,  
8           encumbering, or terminating the interest in, the property.

9           3. If the department determines that it has a claim under subd. 1., the  
10          department shall follow the procedure under sub. (5).

11          4. Transferring title to, encumbering, or terminating an interest in, the  
12          property is not valid unless the department issues to the person, and the person  
13          records, a CERTIFICATE OF CLEARANCE.

14          (5) PROCEDURE IF DEPARTMENT HAS A CLAIM AGAINST REAL PROPERTY. (a) This  
15          subsection applies in any of the following situations:

16           1. If the department determines that it has a claim against real property under  
17           sub. (4) (c) 1.

18           2. Upon the death of a recipient who, immediately before death, had an  
19           ownership interest in real property, including a marital property interest, or whose  
20           surviving spouse has an ownership interest in real property in which the recipient  
21           had a marital property interest with that spouse at any time within 5 years before  
22           the recipient applied for public assistance or during the time that the recipient was  
23           eligible for public assistance, regardless of whether the department recorded a  
24           REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF  
25           POTENTIAL CLAIM with respect to the property.

Insert 20-1

(b) The department shall send to the person providing the notice to the department under sub. (4) (a), or to the surviving owner of the property, whichever is applicable, a statement of claim that states all of the following:

\*\*\*NOTE: Should this procedure be limited to when the property is not being transferred under s. 867.03 (1g) or through informal or formal administration?

1. That the department has a claim against the property that it intends to recover from the property.

2. The amount of and basis for the claim.

3. That the person has a right to an administrative hearing on the extent and fair market value of the recipient's interest in the property and how to request an administrative hearing. The value of the recipient's interest in the property shall be determined in the manner provided in s. 49.849 (5c).

\*\*\*NOTE: See second NOTE after sub. (5) (b) (intro.).

\*\*\*NOTE: Do you need a provision for a fair hearing in this section, like proposed s. 49.849 (5m)?

4. That the transferee of the recipient's interest in the property or the surviving owner of the property may request from the department a hardship waiver and how to request a hardship waiver.

(c) The department may recover against the property in the manner determined by the department to be appropriate, including by placing a lien on the property. Subject to par. (d), the department may enforce a lien on the property by foreclosure in the same manner as a mortgage on real property.

(d) The department may not enforce a lien under par. (c) as long as any of the following is alive:

1. The recipient's spouse.

Statement sent to the department within 45 days after the death

under par. (bm)

Insert 20-13

1           2. The recipient's child who is under age 21 or disabled, as defined in s. 49.468

2           (1) (a) 1.

3           (e) If the recipient's surviving spouse or child who is under age 21 or disabled  
4           refinances a mortgage on the property, any lien under par. (c) is subordinate to the  
5           new encumbrance.

6           (f) The department shall release a lien under par. (c) that the department could  
7           not enforce because of par. (d), if any of the following applies:

8           1. The recipient's surviving spouse or child who is under age 21 or disabled sells  
9           the property for fair market value, as described in s. 49.849 (5c) (d), during the  
10          spouse's or child's lifetime.

→           \*\*\*NOTE: Should this provision include something about the department being  
              paid the amount of its lien after the sale?

11          2. The recipient's surviving spouse or child who is under age 21 or disabled  
12          transfers the property for less than fair market value, as described in s. 49.849 (5c)  
13          (d), during the spouse's or child's lifetime, the transferee sells the property during the  
14          spouse's or child's lifetime and places proceeds equal to the lesser of the department's  
15          lien or the sale proceeds due to the seller in a trust or bond, and the department is  
16          paid the secured amount upon the death of the recipient's spouse or disabled child  
17          or when the recipient's child who is not disabled reaches age ~~21~~ <sup>✓ 21</sup>.

18          3. The surviving owner or transferee of the property, who is not the recipient's  
19          surviving spouse or child who is under age 21 or disabled, sells the property during  
20          the lifetime of the recipient's surviving spouse or child who is under age 21 or  
21          disabled and places proceeds equal to the lesser of the department's lien or the sale  
22          proceeds due to the seller in a trust or bond, and the department is paid the secured

1 amount upon the death of the recipient's spouse or disabled child or when the  
2 recipient's child who is not disabled reaches age ~~18~~ <sup>21</sup>.

3 SECTION 47. 49.849 of the statutes is created to read:

4 **49.849 Recovery of correct payments under certain public assistance**  
5 **programs. (1) DEFINITIONS.** In this section:

6 (a) "Decedent" means a deceased recipient or a deceased nonrecipient surviving  
7 spouse, whichever is applicable.

8 (b) "Department" means the department of health services.

9 (c) "Nonrecipient surviving spouse" means any person who was married to a  
10 recipient while the recipient was receiving public assistance and who survived the  
11 recipient.

12 (d) 1. "Property of a decedent" means all real and personal property to which  
13 the recipient held any legal title or in which the recipient had any legal interest  
14 immediately before death, to the extent of that title or interest, including assets  
15 transferred to a survivor, heir, or assignee through joint tenancy, tenancy in common,  
16 survivorship, life estate, living trust, or any other arrangement.

17 2. Notwithstanding subd. 1., "property of a decedent" includes <sup>all</sup> ~~any~~ real  
18 <sup>and personal</sup> property in which the nonrecipient surviving spouse had an ownership interest at  
19 the recipient's death and in which the recipient had a marital property interest with  
20 that nonrecipient surviving spouse at any time within 5 years before the recipient  
21 applied for public assistance or during the time that the recipient was eligible for  
22 public assistance.

23 (e) "Public assistance" means any services provided as a benefit under a  
24 long-term care program, as defined in s. 49.496 (1) (bk), medical assistance under

1 subch. IV, long-term community support services funded under s. 46.27 (7), or aid  
2 under s. 49.68, 49.683, or 49.685.

3 (f) "Recipient" means a person who received public assistance.

4 (2) RECOVERABLE AMOUNTS. (c) There is a presumption, which may be rebutted  
5 by clear and convincing evidence, that all property of the deceased nonrecipient  
6 surviving spouse was marital property held with the recipient and that 100 percent  
7 of the property of the deceased nonrecipient surviving spouse is subject to the  
8 department's claim under par. (a).

9 (3) TRANSMITTAL OF PROPERTY UPON RECEIPT OF AFFIDAVIT. (a) Any property of a  
10 decedent that is transferred by a person who has possession of the property at the  
11 time of the decedent's death is subject to the right of the department to recover the  
12 amounts specified in sub. (2) (a). Upon request, the person who transferred the  
13 property shall provide to the department information about the property of the  
14 decedent that the person has transferred and information about the persons to whom  
15 the property was transferred.

16 (c) An affidavit under this subsection shall contain all of the following  
17 information:

18 1. That the department has a claim against the property that it intends to  
19 recover from the property.

20 2. The amount of and basis for the claim.

21 3. That the person may have a right to an administrative hearing under sub.

22 (5m) on the extent and fair market value of the recipient's interest in the property.

23 4. How to request an administrative hearing under sub. (5m).

24 5. That the person may request from the department a hardship waiver, if the  
25 person co-owned the property with the decedent or is a beneficiary of the property.

→, which must be requested within 45 days<sup>✓</sup> after the  
department sent the affidavit,

6. How to request a hardship waiver under subd. 5.

(2) (4) RECOVERY AGAINST REAL PROPERTY. (b) Section 49.848 (5) applies to the department's recovery of the amount, or portion of the amount, that it may recover under sub. (2) (a) from any property of the decedent that is real property.

(4m) ALLOWABLE COSTS OF SALE OF REAL PROPERTY. (a) Subject to par. (b), if any property of a decedent that is real property has been sold after the death of the decedent, only the following reasonable expenses, if any, incurred in preserving or disposing of the real property may be deducted from the sale proceeds that the department may recover:

1. Closing costs of sale, including reasonable attorney fees of the seller, the cost of title insurance, and recording costs.

2. Property insurance premiums.

3. Property taxes due.

4. Utility costs necessary to preserve the property.

5. Expenses incurred in providing necessary maintenance or making necessary repairs, without which the salability of the property would be substantially impaired.

(b) Any expense under par. (a) may be deducted from the sale proceeds only if it is documented and approved by the department and it was not incurred while any other individual was living on the property.

(5c) VALUE OF RECIPIENT'S INTEREST. For purposes of determining the value of the recipient's interest in property of the decedent, all of the following apply:

(a) If the recipient held title to real property jointly with one or more persons other than his or her spouse, the recipient's interest in the real property is equal to



1 the fractional interest that the recipient would have had in the property if the  
2 property had been held with the other owner or owners as tenants in common.

3 (b) If the recipient held title to personal property jointly with one or more  
4 persons other than his or her spouse, the recipient's interest in the personal property  
5 is equal to either of the following:

6 1. The percentage interest that was attributed to the recipient when his or her  
7 eligibility for public assistance was determined.

8 2. If the percentage interest was not determined as provided in subd. 1., the  
9 fractional interest that the recipient would have had in the property if the property  
10 had been held with the other co-owner or co-owners as tenants in common.

11 (c) If the recipient held a life estate in real property, the recipient's interest is  
12 equal to the recipient's percentage of ownership in the property based on the  
13 recipient's age on the date of death and calculated using the fair market value of the  
14 property and life estate-remainderman tables used by the department to value life  
15 estates for purposes of determining eligibility for Medical Assistance.

\*\*\*\*NOTE: I added "in the property" after "ownership." The suggested change was  
to add "life tenant" before "ownership," but I don't think that really answers the question  
of what "ownership" refers to. Is my change okay?

16 (d) A property's fair market value is the price that a willing buyer would pay  
17 a willing seller for the purchase of the property. The burden of proof for establishing  
18 a property's fair market value is on the surviving owners or beneficiaries, or their  
19 representatives. Fair market value must be established through a credible  
20 methodology, which may include an appraisal performed by a licensed appraiser.

21 (5m) FAIR HEARING. A person who has possession of any property of the  
22 decedent, or who receives an affidavit from the department under sub. (3) (c) for  
23 transmittal of any property of the decedent, is entitled to and may request a

, within 45 days after the affidavit  
was sent, ✓

departmental fair hearing on the value of <sup>the</sup> property and the extent of the recipient's interest in the property, if the property is not being transferred under s. 867.03 or through formal or informal administration of the decedent's estate.

**(5r) ACTION OR ORDER TO ENFORCE RECOVERY.** (a) If, after receipt of an affidavit

under sub. (3), a person who possesses property of a decedent fails to transmit the property to the department, the department may bring an action to enforce its right to collect amounts specified in sub. (2) (a) from the property or may issue an order to compel transmittal of the property. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order. The only issue at the hearing shall be the determination by the department that the person has not transmitted the property to the department.

NOTE: Since a person who receives an affidavit may request a fair hearing under sub. (5m), do you want to specify a time limit after receipt of an affidavit and if no fair hearing is requested before the department may bring an action or issue an order, such as if 30 days have elapsed after receipt of the affidavit and the person has not requested a fair hearing or transmitted the property?

(b) If any person named in an order to compel transmittal of property issued under par. (a) fails to transmit the property under the terms of the order and no contested case to review the order is pending and the time for filing for a contested case review has expired, the department may present a certified copy of the order to the circuit court for any county. The sworn statement of the secretary shall be evidence of the department's right to collect amounts specified in sub. (2) (a) from the property and of the person's failure to transmit the property to the department. The circuit court shall, without notice, render judgment in accordance with the order. A judgment rendered under this paragraph shall have the same effect and shall be entered in the judgment and lien docket and may be enforced in the same manner

1 as if the judgment had been rendered in an action tried and determined by the circuit  
2 court.

3 (c) The recovery procedure under this subsection is in addition to any other  
4 recovery procedure authorized by law.

5 **(6) PAYMENTS FROM RECOVERED AMOUNTS.**

6 **SECTION 48.** 49.85 (title) of the statutes is amended to read:

7 **49.85 (title) Certification of certain public assistance overpayments,**  
8 **payment recoveries, and delinquent loan repayments.**

9 **SECTION 49.** 49.85 (2) (a) (intro.) of the statutes is amended to read:

10 49.85 (2) (a) (intro.) At least annually, the department of health services shall  
11 certify to the department of revenue the amounts that, based on the notifications  
12 received under sub. (1) and on other information received by the department of  
13 health services, the department of health services has determined that it may  
14 recover under s. 49.45 (2) (a) 10., 49.497, 49.793, ~~or~~ 49.847, or 49.849, except that the  
15 department of health services may not certify an amount under this subsection  
16 unless all of the following apply:

17 **SECTION 50.** 49.85 (2) (a) 4. of the statutes is created to read:

18 49.85 (2) (a) 4. If the determination relates to recovery of an amount under s.  
19 49.849, the determination was rendered to a judgment under s. 49.849 (5r) (b).

20 **SECTION 51.** 49.85 (3) (a) 1. of the statutes is amended to read:

21 49.85 (3) (a) 1. Inform the person that the department of health services  
22 intends to certify to the department of revenue an amount that the department of  
23 health services has determined to be due under s. 49.45 (2) (a) 10., 49.497, 49.793,  
24 ~~or~~ 49.847, or 49.849, for setoff from any state tax refund that may be due the person.

25 **SECTION 52.** 59.43 (1) (w) of the statutes is created to read:

59.43 (1) (w) Record and index the documents specified in s. 49.848 (2).

SECTION 53. 632.697 of the statutes is created to read:

**632.697 Benefits subject to department's right to recover.** Death

benefits payable under a life insurance policy or an annuity are subject to the right

of the department of health services to recover under s. 46.27 (7g), 49.496, 49.682,

or 49.849 an amount equal to the medical assistance that is recoverable under s.

49.496 (3) (a), an amount equal to aid under s. 49.68, 49.683, or 49.685 that is

recoverable under s. 49.682 (2) (a), or an amount equal to long-term community

support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c) 1. and that

was paid on behalf of the deceased policyholder or annuitant or the spouse of the

deceased policyholder or annuitant

\*\*\*NOTE: Does it make sense to include the spouse here?

SECTION 54. 700.24 of the statutes is amended to read:

**700.24 Death of a joint tenant; effect of liens.** A real estate mortgage, a

security interest under ch. 409, or a lien under s. 72.86 (2), 1985 stats., or s. 71.91 (5)

(b), or ch. 49 or 779 or rules promulgated under s. 46.286 (7) on or against the interest

of a joint tenant does not defeat the right of survivorship in the event of the death

of such joint tenant, but the surviving joint tenant or tenants take the interest such

deceased joint tenant could have transferred prior to death subject to such mortgage,

security interest, or statutory lien.

SECTION 55. 701.065 (1) (b) 1. of the statutes is amended to read:

701.065 (1) (b) 1. The claim is a claim based on tort, on a marital property

agreement that is subject to the time limitations under s. 766.58 (13) (b) or (c), on

Wisconsin income, franchise, sales, withholding, gift, or death taxes, or on

unemployment compensation contributions due or benefits overpaid; a claim for

funeral or administrative expenses; a claim of this state under s. 46.27 (7g), 49.496  
or 49.682, or rules promulgated under s. 46.286 (7) 49.849; or a claim of the United  
States.

SECTION 56. 701.065 (5) of the statutes is created to read:

701.065 (5) CLAIMS OF DEPARTMENT OF HEALTH SERVICES. (a) *Definitions*. In this  
subsection:

1. "Department" means the department of health services.

2. "Long-term care program" has the meaning given in s. 49.496 (1) (bk).

(b) *Living trusts*. 1. Notwithstanding sub. (1) (a), if a settlor or the spouse of  
a settlor of a living trust at anytime received any services provided as a benefit under  
a long-term care program, medical assistance under subch. IV of ch. 49, long-term  
community support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683,  
or 49.685, the trustee shall provide written notice to the department by registered  
or certified mail, within 30 days after the death of the settlor and before any property  
held in the trust is distributed. The notice shall include demographic information  
about the settlor and the settlor's predeceased spouse, if any, information about how to file  
a claim, a copy of the trust document, and documentation supporting the value of the  
trust on the settlor's date of death.

2. After the death of a settlor described in subd. 1., the department may recover  
under s. 46.27 (7g), 49.496, 49.682, or 49.849, from property held in the living trust  
immediately before the settlor's death, an amount equal to the medical assistance  
that is recoverable under s. 49.496 (3) (a), an amount equal to aid under s. 49.68,  
49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), or an amount equal to  
long-term community support services under s. 46.27 that is recoverable under s.  
46.27 (7g) (c) 1. and that was paid on behalf of the settlor or the settlor's spouse.

\*\*\*\*NOTE: If the spouse of the settlor received the services, does the settlor's spouse need to have predeceased the settlor in the two subdivisions above?

1           3. Within 90 days after receipt of a claim for recovery from the department, a  
2 trustee under subd. 1. shall pay to the department any amount that the department  
3 may recover under subd. 2. If the trustee distributes property from the trust before  
4 the department makes a claim to the trustee for the recovery of any amount specified  
5 in subd. 2., the trustee shall provide the department with information about the  
6 distributed property and to whom it was distributed or transferred. The department  
7 is entitled to recover any amounts specified in subd. 2. from the persons to whom the  
8 property was distributed or transferred.

\*\*\*\*NOTE: I asked our trust drafter to review these provisions. She suggested that it might be helpful if there were a time limit on how long the department has to make a claim after receiving the notice from the trustee. That way, the trustee and any persons receiving property from the trust would have some finality.

9           (c) *Special needs or pooled trusts.* 1. Notwithstanding sub. (1) (a), within 30  
10 days after the death of a beneficiary under a trust described in 42 USC 1396p (d) (4)  
11 (A) or (C), the trustee shall provide written notice to the department by registered  
12 or certified mail. The notice shall include demographic information about the  
13 decedent, information about how to file a claim, a copy of the trust document, and  
14 documentation supporting the value of the decedent's property held in the trust on  
15 the decedent's date of death. Within 90 days after receipt of a claim from the  
16 department, the trustee shall repay the department for any medical assistance paid  
17 on behalf of the decedent, as required under the terms of the trust.

18           2. If a trustee under subd. 1. fails to comply with the notice and repayment  
19 requirements under subd. 1., the trustee is personally liable to the department for  
20 any costs the department incurs in recovering medical assistance amounts paid on  
21 behalf of the decedent from property distributed from the trust before any repayment

1 is made and for any recoverable amounts that the department is unable to recover  
2 from persons to whom the property was distributed.

3 3. Notwithstanding the terms of the trust, after the death of a beneficiary under  
4 a trust described in 42 USC 1396p (d) (4) (C), the trustee may retain up to 30 percent  
5 of the balance in the decedent's account, unless the trustee fails to comply with the  
6 notice and repayment requirements under subd. 1., in which case the trustee may  
7 not retain any of the balance in the decedent's account.

8 **SECTION 57.** 705.04 (2g) of the statutes is amended to read:

9 705.04 (2g) Notwithstanding subs. (1) and (2), the department of health  
10 services may collect, from funds of a decedent that are held by the decedent  
11 immediately before death in a joint account or a P.O.D. account, an amount equal to  
12 the medical assistance that is recoverable under s. 49.496 (3) (a), an amount equal  
13 to aid under s. 49.68, 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), or  
14 an amount equal to long-term community support services under s. 46.27 that is  
15 recoverable under s. 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or  
16 the decedent's spouse ~~or an amount equal to the family care benefit under s. 46.286~~  
17 ~~that is recoverable under rules promulgated under s. 46.286 (7) and that was paid~~  
18 ~~on behalf of the decedent or the decedent's spouse.~~

19 **SECTION 58.** 766.55 (2) (bm) of the statutes is created to read:

20 766.55 (2) (bm) An obligation incurred by a spouse that is recoverable under  
21 s. 46.27 (7g), 49.496, 49.682, or 49.849 may be satisfied from all property that was  
22 the property of that spouse immediately before that spouse's death and from all  
23 property that was marital property at any time within 5 years before that spouse  
24 applied for public assistance, as defined in s. 49.849 (1) (e), or while that spouse was  
25 eligible for public assistance, as defined in s. 49.849 (1) (e).

\*\*\*\*NOTE: I have included a marital property provision, as you suggested. I don't think that it adds anything more to what is included in the draft in the ch. 49 sections. However, it is up to you whether it stays in the draft, as is or modified.

1           **SECTION 59.** 859.02 (2) (a) of the statutes is amended to read:

2           859.02 (2) (a) It is a claim based on tort, on a marital property agreement that  
3 is subject to the time limitations under s. 766.58 (13) (b) or (c), on Wisconsin income,  
4 franchise, sales, withholding, gift, or death taxes, or on unemployment insurance  
5 contributions due or benefits overpaid; a claim for funeral or administrative  
6 expenses; a claim of this state under s. 46.27 (7g), 49.496 ~~or~~, 49.682, or rules  
7 promulgated under s. 46.286 (7) 49.849; or a claim of the United States; or

8           **SECTION 60.** 859.07 (2) (a) 3. of the statutes is amended to read:

9           859.07 (2) (a) 3. The decedent or the decedent's spouse received ~~the family care~~  
10 ~~benefit under s. 46.286~~ services provided as a benefit under a long-term care  
11 program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of ch.  
12 49, long-term community support services funded under s. 46.27 (7), or aid under s.  
13 49.68, 49.683, or 49.685.

14          **SECTION 61.** 867.01 (3) (am) 4. of the statutes is amended to read:

15          867.01 (3) (am) 4. Whether the decedent or the decedent's spouse received ~~the~~  
16 ~~family care benefit under s. 46.286~~ services provided as a benefit under a long-term  
17 care program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of  
18 ch. 49, long-term community support services funded under s. 46.27 (7) or aid under  
19 s. 49.68, 49.683 or 49.685.

20          **SECTION 62.** 867.01 (3) (d) of the statutes is amended to read:

21          867.01 (3) (d) *Notice.* The court may hear the matter without notice or order  
22 notice to be given under s. 879.03. If the decedent or the decedent's spouse received  
23 ~~the family care benefit under s. 46.286~~ services provided as a benefit under a



1 long-term care program, as defined in s. 49.496 (1) (bk), medical assistance under  
2 subch. IV of ch. 49, long-term community support services funded under s. 46.27 (7),  
3 or aid under s. 49.68, 49.683, or 49.685, the petitioner shall give notice by certified  
4 mail to the department of health services as soon as practicable after filing the  
5 petition with the court.

6 **SECTION 63.** 867.02 (2) (am) 6. of the statutes is amended to read:

7 867.02 (2) (am) 6. Whether the decedent or the decedent's spouse received ~~the~~  
8 ~~family care benefit under s. 46.286~~ services provided as a benefit under a long-term  
9 care program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of  
10 ch. 49, long-term community support services funded under s. 46.27 (7), or aid under  
11 s. 49.68, 49.683, or 49.685.

12 **SECTION 64.** 867.03 (1g) (c) of the statutes is amended to read:

13 867.03 (1g) (c) Whether the decedent or the decedent's spouse ever received ~~the~~  
14 ~~family care benefit under s. 46.286~~ services provided as a benefit under a long-term  
15 care program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of  
16 ch. 49, long-term community support services funded under s. 46.27 (7) or aid under  
17 s. 49.68, 49.683 or 49.685.

18 **SECTION 65.** 867.03 (1m) (a) of the statutes is amended to read:

19 867.03 (1m) (a) Whenever an heir, trustee, or person who was guardian of the  
20 decedent at the time of the decedent's death intends to transfer a decedent's property  
21 by affidavit under sub. (1g) and the decedent or the decedent's spouse ever received  
22 ~~the family care benefit under s. 46.286~~ services provided as a benefit under a  
23 long-term care program, as defined in s. 49.496 (1) (bk), medical assistance under  
24 subch. IV of ch. 49, long-term community support services funded under s. 46.27 (7),  
25 or aid under s. 49.68, 49.683, or 49.685, the heir, trustee, or person who was guardian

1 of the decedent at the time of the decedent's death shall give notice to the department  
2 of health services of his or her intent. The notice shall include the information in the  
3 affidavit under sub. (1g) and the heir, trustee, or person who was guardian of the  
4 decedent at the time of the decedent's death shall give the notice by certified mail,  
5 return receipt requested.

6 **SECTION 66.** 867.03 (1m) (b) of the statutes is amended to read:

7 867.03 (1m) (b) An heir, trustee, or person who was guardian of the decedent  
8 at the time of the decedent's death who files an affidavit under sub. (1g) that states  
9 that the decedent or the decedent's spouse received the family care benefit under s.  
10 ~~46.286~~ services provided as a benefit under a long-term care program, as defined in  
11 s. 49.496 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community  
12 support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, or 49.685  
13 shall attach to the affidavit the proof of mail delivery of the notice required under par.  
14 (a) showing ~~a the delivery date that is not less than 10 days before the day on which~~  
15 ~~the heir, trustee, or person who was guardian of the decedent at the time of the~~  
16 ~~decedent's death files the affidavit.~~

17 **SECTION 67.** 867.03 (2g) of the statutes is renumbered 867.03 (2g) (a) and  
18 amended to read:

19 867.03 (2g) (a) By accepting the decedent's property under this section the heir,  
20 trustee, or guardian assumes a duty to apply the property transferred for the  
21 payment of obligations according to priorities established under s. 859.25 and to  
22 distribute any balance to those persons designated in the appropriate governing  
23 instrument, as defined in s. 854.01, of the decedent or if there is no governing  
24 instrument, according to the rules of intestate succession under ch. 852, subject to  
25 par. (b). An heir or guardian may publish a notice to creditors in the same manner

1 and with the same effect as a trustee under s. 701.065. This subsection paragraph  
2 does not prohibit any appropriate person from requesting administration of the  
3 decedent's estate under s. 856.07 or ch. 865.

4 **SECTION 68.** 867.03 (2g) (b) of the statutes is created to read:

5 867.03 (2g) (b) Property transferred under this section to or by an heir, trustee,  
6 or guardian is subject to the right of the department of health services to recover  
7 under s. 46.27 (7g), 49.496, 49.682, or 49.849 an amount equal to the medical  
8 assistance that is recoverable under s. 49.496 (3) (a), an amount equal to aid under  
9 s. 49.68, 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), or an amount  
10 equal to long-term community support services under s. 46.27 that is recoverable  
11 under s. 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or the decedent's  
12 spouse. Upon request, the heir, trustee, or guardian shall provide to the department  
13 of health services information about any of the decedent's property that the heir,  
14 trustee, or guardian has distributed and information about the persons to whom the  
15 property was distributed.

16 **SECTION 69.** 867.035 (title) of the statutes is repealed.

17 **SECTION 70.** 867.035 (1) (a) (intro.) of the statutes is renumbered 49.849 (2) (a)  
18 (intro.) and amended to read:

19 49.849 (2) (a) (intro.) Subject to par. ~~(bm)~~ (b), the department of health services  
20 may collect from the property of a decedent, ~~including funds of a decedent that are~~  
21 ~~held by the decedent immediately before death in a joint account or a P.O.D. account,~~  
22 by affidavit under sub. ~~(2)~~ (3) ~~(b)~~ or by lien under sub. ~~(2m)~~ (4) ~~(a)~~ an amount equal  
23 to the medical assistance that is recoverable under s. 49.496 (3) (a), the long-term  
24 community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c)  
25 1., ~~the family care benefit that is recoverable under rules promulgated under s.~~

1     ~~46.286 (7)~~, or the aid under s. 49.68, 49.683, or 49.685 that is recoverable under s.  
2     49.682 (2) (a), and that was paid on behalf of the decedent or the decedent's spouse,  
3     if all of the following conditions are satisfied:

4             **SECTION 71.** 867.035 (1) (a) 1. of the statutes is repealed.

5             **SECTION 72.** 867.035 (1) (a) 2. of the statutes is renumbered 49.849 (2) (a) 1.

6             **SECTION 73.** 867.035 (1) (a) 3. of the statutes is renumbered 49.849 (2) (a) 2.

7             **SECTION 74.** 867.035 (1) (a) 4. of the statutes is repealed.

8             **SECTION 75.** 867.035 (1) (bm) of the statutes is renumbered 49.849 (2) (b), and  
9     49.849 (2) (b) (intro.), as renumbered, is amended to read:

10            49.849 (2) (b) (intro.) The department of ~~health services~~ shall reduce the  
11     amount of its recovery under par. (a) by up to the amount specified in s. 861.33 (2)  
12     if necessary to allow the decedent's heirs or beneficiaries under the decedent's will  
13     to retain the following personal property of the decedent:

14            **SECTION 76.** 867.035 (2) of the statutes is renumbered 49.849 (3) (b) and  
15     amended to read:

16            49.849 (3) (b) A person who possesses or receives property of a decedent shall  
17     transmit the property to the department of ~~health services~~, if the conditions in sub.  
18     ~~(1) (a) 1. to 4.~~ (2) (a) 1. and 2. are satisfied, upon receipt of an affidavit by a person  
19     designated by the secretary of health services to administer this section showing that  
20     the department paid on behalf of the decedent or the decedent's spouse recoverable  
21     benefits specified in sub. ~~(1)~~ (2) (a). Upon transmittal, the person is released from  
22     any obligation to other creditors or heirs of the decedent.

23            **SECTION 77.** 867.035 (2m) (a) of the statutes is renumbered 49.849 (4) (a), and  
24     49.849 (4) (a) (intro.), as renumbered, is amended to read:

1           49.849 (4) (a) (intro.) If the ~~conditions~~ condition in sub. (1) (a) 1., 2., and 4. are  
2           (2) (a) 1. is satisfied, the department of health services shall have a lien in the amount  
3           that it may recover under sub. (1) (2) (a) on any interest in the decedent's any  
4           property of the decedent that is real property, including a home, as defined in s.  
5           49.496 (1) (b), ~~transferred under s. 867.03 (1g)~~. The department may record the lien  
6           in the office of the register of deeds of the county in which the real property is located.  
7           ⑦ <sup>→ 4 (b)</sup> The department may enforce <sup>a</sup> ~~the~~ <sup>↑</sup> lien <sup>→ under par. (a) ✓</sup> by foreclosure in the same manner as a  
8           mortgage on real property, unless any of the following is alive:

\*\*\*\*NOTE: I removed "transferred under s. 867.03 (1g)" because, as I understand it,  
this provision applies in other situations, too.

9           **SECTION 78.** 867.035 (2m) (b) of the statutes is repealed.

10          **SECTION 79.** 867.035 (3) of the statutes is renumbered 49.849 (5) and amended  
11          to read:

12          49.849 (5) OTHER VALID CLAIMS. If a person has a valid claim against the  
13          decedent's estate property of the decedent that would have a higher priority under  
14          s. 859.25 (1) if the estate were administered property were subject to administration  
15          than the department of health services would have under s. 859.25 (1) (e) and the  
16          person demands payment in writing within one year of the date on which the  
17          property was transmitted to the department, the department shall pay to the person  
18          the value of the property collected under sub. (2) (3) or the amount of the claim,  
19          whichever is less. The department may authorize any person who possesses  
20          property of the decedent to honor higher priority claims with the decedent's property  
21          before transmitting property to the department.

22          **SECTION 80.** 867.035 (4) of the statutes is renumbered 49.849 (6) (a) and  
23          amended to read:

1           49.849 (6) (a) From the appropriation under s. 20.435 (4) (im), with respect to  
2 funds collected by the department under sub. (1) (2) related to medical assistance  
3 paid on behalf of the decedent or the decedent's spouse, the department of health  
4 services shall pay claims under sub. (3) (5), shall pay to the federal government from  
5 the amount recovered under this section and not paid out as claims under sub. (3)  
6 (5) an amount equal to the amount of federal funds used to pay the benefits recovered  
7 under this section and shall spend the remainder of the amount recovered under this  
8 section for medical assistance benefits under subch. IV of ch. 49.

9           **SECTION 81.** 867.035 (4m) of the statutes is renumbered 49.849 (6) (b) and  
10 amended to read:

11           49.849 (6) (b) From the appropriation under s. 20.435 (7) (im), with respect to  
12 funds collected by the department under sub. (1) (2) related to long-term community  
13 support services funded under s. 46.27 (7) paid on behalf of the decedent or the  
14 decedent's spouse, the department of health services shall pay claims under sub. (3)  
15 (5) and shall spend the remainder of the funds recovered under this section for  
16 long-term community support services funded under s. 46.27 (7).

17           **SECTION 82.** 867.035 (5) of the statutes is renumbered 49.849 (7) and amended  
18 to read:

19           49.849 (7) RULES FOR HARDSHIP WAIVER. The department of health services shall  
20 promulgate rules establishing standards to determine whether the application of  
21 this section would work an undue hardship in individual cases. If the department  
22 of health services determines that the application of this section would work an  
23 undue hardship in a particular case, the department shall waive the application of  
24 this section in that case. This subsection does not apply with respect to collecting

1 from the property of a decedent if the decedent is a deceased nonrecipient surviving  
2 spouse.

3 SECTION 83. 893.33 (5) of the statutes is created to read:

4 893.33 (5) This section applies to liens of the department of health services  
5 on real property under ss. 46.27 (7g), 49.496, 49.682, 49.848, and 49.849.

6 **SECTION 9118. Nonstatutory provisions; Health Services.**

7 (1) RECORDING POTENTIAL CLAIM DOCUMENTS IN THE OFFICE OF THE REGISTER OF  
8 DEEDS. Notwithstanding section 49.848 (3) (a) 1. (intro.) of the statutes, as created  
9 by this act, and SECTION 9318 (3) of this act, the department of health services may  
10 apply the provisions of section 49.848 of the statutes, as created by this act, with  
11 respect to individuals who are receiving public assistance, as defined in section  
12 49.848 (1) (b) of the statutes, as created by this act, on October 1, 2013, or on the 90th  
13 day after publication, whichever is later, and who, when they applied for public  
14 assistance, as defined in section 49.848 (1) (b) of the statutes, as created by this act,  
15 had any of the ownership interests in real property specified in section 49.848 (3) (a)  
16 1. a. and b. of the statutes, as created by this act.

\*\*\*NOTE: Do you want them to have these ownership interests on the effective date  
rather than when they applied for public assistance, as drafted above?

17 **SECTION 9318. Initial applicability; Health Services.**

18 (1) RECOVERY OF LONG-TERM CARE PAYMENTS. The treatment of section 49.496 (3)  
19 (a) 2. am. of the statutes first applies to additional services that are received by an  
20 individual who is participating in a long-term care program on the effective date of  
21 this subsection.

22 (2) RECOVERY OF CAPITATED PAYMENTS. The treatment of section 49.496 (3) (ad)  
23 of the statutes first applies to capitation payments made for services that are

✓ that are coated or modified

auto ref c.

(a) *Notices.* The treatment of section 701.065 (5) (c) 1. and 2. of the statutes first applies to deaths occurring on the effective date of this paragraph.

(b) *Retained amounts.* The treatment of section 701.065 (5) (c) 3. of the statutes applies to deaths of beneficiaries under pooled trusts who apply for medical  
tance on the effective date of this paragraph. *g*

\*\*\*NOTE: This seems to be what the instructions are asking for, but I'm not sure it is what you intended. Does this work with the "Notwithstanding the terms of the trust" language in proposed s. 701.065 (5) (c) 3.? Perhaps the "notwithstanding" language is not needed.

~~(4) RECOVERY OF PUBLIC ASSISTANCE FROM PROPERTY OF A DECEDENT. The treatment of sections 46.27 (7g) (a) 5. and (c) 2m., 3. (intro.), and 5. a. and b., 49.496~~

(1) (a), (af), (bw), and (cm) and (3) (a) (intro.) and 2. am., (ad), (aj), (am) (intro.), and (dm), 49

(c) 1. and 2., 49.682 (1) (e) and (2) (bm), (c) (intro.), and (e) 1. and 2., 49.849 (1) (d),  
~~and (c)~~

(2) (c), (3) (a), (4) (b), (4m), (5c), (5m), and (5r), 49.85 (title), (2) (a) (intro.) and 4., and (1) (b) and (5) (a) and (b), 75.04 (2g). 2, 3,

(3) (a) 1., 701.065 (5) (c), 766.55 (2) (bm), and 867.035 (1) (a) (intro.), 1., and 4., (2),  
→ 700.24, → 859.02 (2) (a), 867.01 (3) (am) 4. and (d), 86  
(2m) (a) and (b), and (3) of the statutes first applies to the recovery of public

assistance, as defined in section 49.849 (1) (e) of the statutes, as created by this act,  
provided to individuals who die on the effective date of this subsection.

~~\*\*\*\*NOTE: The requested initial applicability was for medical assistance provided on the effective date to individuals who die on or after the effective date. It can only be one or the other: either recovery of public assistance (because it is more than MA) that is provided on or after the effective date or recovery from the estates, etc., of individuals who die on or after the effective date. Which is the important event, the date of the death or when public assistance was provided? This initial applicability makes the date of death the important event; however, it can be modified to make public assistance provided on and after the effective date the "event" around which everything is based.~~

(5) ~~RECORDING POTENTIAL CLAIM DOCUMENTS IN THE OFFICE OF THE REGISTER OF DEEDS.~~ The treatment of section 49.848 of the statutes first applies to individuals who

the renumbering and amendment of section 867.03 (2g) of the statutes,  
and the creation of section 867.03 (2g)(b) of the statutes



are determined to be eligible for public assistance on October 1, 2013, or on the 90th day after publication, whichever is later.

\*\*\*\*NOTE. This is the logical initial applicability for proposed s. 49.848, since under the language in the draft the department records a document when an individual becomes eligible for public assistance. It is not necessary to delay the effective date of s. 49.848 with an initial applicability as above. See the nonstatutory provision I have included.

### SECTION 9418. Effective dates; Health Services.

(1) MEDICAL ASSISTANCE ESTATE RECOVERY. The treatment of sections 46.27 (7g) 1m., 4. and  
 (a) 5. and (c) 2m., 3. (intro.), and 5. a. and b. 49.496 (1) (a), (af), (bw), and (cm) and  
 (3) (a) (intro.) and 2. 1m., (ad), (aj), (am) (intro.), and (c) 1. and 2. 49.682 (1) (e) and  
 (2) (bm), (c) (intro.), and (e) 1. and 2. 49.849 (1) (d), (2) (c), (3) (a), (4) (b), (4m), (5c),  
 (5m), and (5r) 49.85 (title), (2) (a) (intro.) and 4., and (3) (a) 1. 701.065 (5) (c), 766.55  
 (2) (bm), and 867.035 (1) (a) (intro.), 1., and 4., (2), (2m) (a) and (b), and (3) of the  
 statutes and SECTION 9318 (1), (2), (3), and (4) of this act take effect on October 1,  
 2013, or on the 90th day after publication, whichever is later.

(END)

effective date insert

- note

received by an individual who is participating in a managed long-term care program on the effective date of this subsection.

### (3) SPECIAL NEEDS AND POOLED TRUSTS.

(a) *Notices*. The treatment of section 701.065 (5) (c) 1. and 2. of the statutes first applies to deaths occurring on the effective date of this paragraph.

(b) *Retained amounts*. The treatment of section 701.065 (5) (c) 3. of the statutes first applies to deaths of beneficiaries under pooled trusts who apply for medical assistance on the effective date of this paragraph.

\*\*\*\*NOTE: This seems to be what the instructions are asking for, but I'm not sure it is what you intended. Does this work with the "Notwithstanding the terms of the trust" language in proposed s. 701.065 (5) (c) 3.? Perhaps the "notwithstanding" language is not needed.

(4) RECOVERY OF PUBLIC ASSISTANCE FROM PROPERTY OF A DECEDENT. The treatment of sections 46.27 (7g) (a) 5. and (c) 2m., 3. (intro.), and 5. a. and b., 49.496 (1) (a), (af), (bw), and (cm) and (3) (a) (intro.) and 2. am., (ad), (aj), (am) (intro.), and (c) 1. and 2., 49.682 (1) (e) and (2) (bm), (c) (intro.), and (e) 1. and 2., 49.849 (1) (d), (2) (c), (3) (a), (4) (b), (4m), (5c), (5m), and (5r), 49.85 (title), (2) (a) (intro.) and 4., and (3) (a) 1., 701.065 (5) (a), 766.55 (2) (bm), and 867.035 (1) (a) (intro.), 1., and 4., (2), (2m) (a) and (b), and (3) of the statutes first applies to the recovery of public assistance, as defined in section 49.849 (1) (e) of the statutes, as created by this act, provided to individuals who die on the effective date of this subsection. (end ins 40-8)

\*\*\*\*NOTE: The requested initial applicability was for medical assistance provided on the effective date to individuals who die on or after the effective date. It can only be one or the other: either recovery of public assistance (because it is more than MA) that is provided on or after the effective date or recovery from the estates, etc., of individuals who die on or after the effective date. Which is the important event, the date of the death or when public assistance was provided? This initial applicability makes the date of death the important event; however, it can be modified to make public assistance provided on and after the effective date the "event" around which everything is based.

(5) RECORDING POTENTIAL CLAIM DOCUMENTS IN THE OFFICE OF THE REGISTER OF DEEDS. The treatment of section 49.848 of the statutes first applies to individuals who

NO, the renumbering and amendment of section 867.03(2g) of the statutes, and the creation of section 867.03(2g)(b) of the statutes

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**EFFECTIVE DATE INSERT**

**SECTION 9418. Effective dates; Health Services.**

(1) MEDICAL ASSISTANCE ESTATE RECOVERY. The treatment of sections 20.435 (4) (im) and (in) and (7) (im), 46.27 (7g) (a) 1m., 4. and 5., (c) 1., 2m., 3. (intro.), 5. a. and b., 6. (intro.), and 6m., and (g), 46.286 (7), 46.287 (2) (a) 1. k., 49.496 (1) (a), (af), (bk), (bw), and (cm), (3) (a) (intro.) and 2. a., am., b., and c., (ad), (aj), (am) (intro.), (c) 1. and 2., (d) (intro.), and (dm), and (6m), 49.4962, 49.682 (1) (am), (d), and (e), (2) (a), (bm), (c) (intro.), (e) 1. and 2., (f) (intro.), and (fm), (3), and (5), 49.848, 49.849, 49.85 (title), (2) (a) (intro.) and 4., and (3) (a) 1., 59.43 (1) (w), 632.697, 700.24, 701.065 (1) (b) 1. and (5), 705.04 (2g), 766.55 (2) (bm), 859.02 (2) (a), 859.07 (2) (a) 3., 867.01 (3) (am) 4. and (d), 867.02 (2) (am) 6., 867.03 (1g) (c) and (1m) (a) and (b), 867.035 (title), (1) (a) (intro.), 1., 2., 3., and 4., and (bm), (2), (2m) (a) and (b), (3), (4), (4m), and (5), and 893.33 <sup>4r</sup> of the statutes, the renumbering and amendment of section 867.03 (2g) of the statutes, the creation of section 867.03 (2g) (b) of the statutes, and SECTION 9318 (~~NO DATE~~), (~~NO DATE~~), (~~NO DATE~~), and (~~NO DATE~~) of this act take effect on October 1, 2013, or on the 90th day after publication, whichever is later.

auto ref A

auto ref B

auto ref C

auto ref D

**2013-2014 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0617/lins  
PJK:.....

INSERT A

1073

Under current law, DHS is required to recover the amount of certain benefits (recoverable public assistance benefits) provided to individuals under certain programs (public assistance programs) by making claims against the estates of the individuals or their spouses. Recoverable public assistance benefits include benefits provided to individuals with hemophilia, cystic fibrosis, or kidney disease under the disease aids program; benefits under certain long-term care programs, including family care; and medical assistance (MA) benefits provided to individuals residing in nursing homes. Also under current law, DHS may collect the amounts of those recoverable public assistance benefits provided to an individual or his or her spouse from the nonprobate property of the individual, by sending an affidavit to a person who possesses the property. Besides making the estate recovery provisions for each of the types of recoverable public assistance benefits consistent with one another and streamlining the nonprobate property recovery program so that it applies to all of the types of recoverable public assistance benefits, this bill makes some changes to those recoverable public assistance benefits recovery programs.

Current law does not define the property that is subject to recovery by DHS. The bill defines the property that is subject to recovery, both nonprobate property and property in an estate, as all real and personal property to which the individual who received the recoverable public assistance benefits under a public assistance program (recipient) held any legal title, or in which the recipient had any legal interest, immediately before death, including assets transferred to an heir or a survivor, such as jointly owned property or property transferred by a living trust. In addition, the property subject to recovery includes any real or personal property in which the recipient's spouse had an ownership interest at the recipient's death and in which the recipient had a marital property interest at any time within five years before the recipient applied for the public assistance program or during the time that the recipient was eligible for the public assistance program. The bill provides that there is a rebuttable presumption that all nonprobate property, and all property in the estate, of the recipient's deceased surviving spouse was marital property held with the recipient and that 100 percent of that property is subject to recovery by DHS. As under current law, however, DHS may not recover nonprobate property or property in an estate if the deceased person has a surviving spouse or a child who is under age 21 or disabled, in which case DHS receives a lien in the amount that it may recover on any real property included in the estate or nonprobate property.

The bill expands on the procedure under current law for recovery of nonprobate property. The bill specifies all of the following: what information must be provided in an affidavit by DHS to a person who possesses property of a decedent; what costs will be allowed if the property was real property and the person has sold the property; that the person receiving an affidavit has the right to a fair hearing on the value of the recipient's interest in the property and how the recipient's interest is determined; and that DHS may bring an action or issue an order to compel transmittal of the property if the person does not transmit the property to DHS after receiving an affidavit.



Ev A conto 2003

1) The bill establishes procedures for DHS to follow with respect to real property owned by a recipient, both before and after death. DHS must create three documents for recording in the office of the register of deeds: 2) a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM (REQUEST); a TERMINATION OF REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM (TERMINATION); and 3) a CERTIFICATE OF CLEARANCE (CLEARANCE). Whenever a recipient, upon becoming eligible for a public assistance program or during the time that the recipient is eligible for a public assistance program, has a current ownership interest in real property, or has a spouse with a current ownership interest in real property in which the recipient had a marital property interest at any time within the five years before applying for the public assistance program or during the time that the recipient is eligible for the public assistance program, DHS may record a REQUEST with respect to the property. Thereafter, unless DHS has recorded a TERMINATION or a CLEARANCE with respect to the property, any title insurance company or agent conducting a title search must note that a REQUEST is recorded against the property in any report for, or in any commitment to offer, a certificate of title insurance for the property. In addition, any person intending to transfer title to, encumber, or terminate an interest in, the property must notify DHS. If the recipient is alive when the notice is given, the person may transfer title to, encumber, or terminate an interest in, the property. If the recipient is deceased and DHS determines that it has no claim for recoverable public assistance benefits, DHS must issue a CLEARANCE to the person for recording. However, if the recipient is deceased and DHS determines that it does have a claim for recoverable public assistance benefits, DHS must send the person a statement of claim and may recover against the property in an appropriate manner, including by placing a lien on the property.

The bill sets out requirements for the enforcement of liens on real property by DHS for recovering recoverable public assistance benefits, including specifying that DHS may enforce such a lien in the same manner as a mortgage on real property; prohibiting DHS from enforcing such a lien if the recipient has a surviving spouse or a child who is under age 21 or disabled; and specifying the circumstances under which DHS must release such a lien if DHS cannot enforce the lien because the recipient has a surviving spouse or a child who is under age 21 or disabled. The bill also provides that a section of the statutes that, generally, imposes a 30-year statute of limitations on the commencement of actions affecting the possession or title to real property applies to liens that DHS has on real property for recovering recoverable public assistance benefits.

The bill specifies that certain transfers of real property are voidable by DHS in court actions, in which case title to the real property reverts to the grantor or his or her estate. A voidable transfer is one that satisfies all of the following criteria: the transfer was made by a grantor who was receiving or who received MA; the transfer was made while the grantor was eligible for MA; DHS was unaware of the transfer; and the transfer was made to hinder, delay, or defraud DHS from recovering MA paid on behalf of the grantor. The bill provides that there is a rebuttable presumption that

✓

*Enrolled 3/8/3*

any "fraudulent transfer" was made to hinder, delay, or defraud DHS from recovering MA if the transfer was made by a grantor who was receiving or who received MA and while the grantor was eligible for MA. The bill defines a "fraudulent transfer" as one in which the property was transferred for less than fair market value or one in which the deed or other conveyance was not recorded during the lifetime of the grantor.

The bill requires trustees of living trusts to notify DHS, within 30 days after the death of the trust settlor and before any assets are distributed, if the trust settlor, or his or her predeceased spouse, received any recoverable public assistance benefits. If DHS sends the trustee a claim for the recovery of recoverable public assistance benefits, the trustee must, within 90 days, pay DHS the amount that it may recover or provide DHS with information about any property that was distributed and to whom it was distributed. The bill requires a trustee of a special needs or pooled trust, the beneficiaries of which receive MA, to provide notice to DHS within 30 days after the death of a trust beneficiary, and to repay DHS, within 90 days after receiving a claim from DHS, for the amount of MA paid on behalf of the beneficiary. If the trustee fails to comply with the notice or repayments requirements, the trustee is personally liable to DHS for any MA amounts paid on behalf of the beneficiary that DHS is unable to recover. The bill also provides that, after the death of a beneficiary under a pooled trust, the trustee may retain up to 30 percent of the balance in the deceased beneficiary's account, unless the trustee fails to comply with the notice and repayment requirements, in which case the trustee may not retain any of the balance in the deceased beneficiary's account.

(END OF INSERT A)

INSERT 5-10

- 1            **SECTION 1.** 46.27 (7g) (c) 6m. of the statutes is created to read:
- 2            46.27 (7g) (c) 6m. All of the following apply to a lien under subd. 5. that the
- 3            department may not enforce because of subd. 6.:
- 4            a. If the decedent's surviving spouse or child who is under age 21 or disabled
- 5            refinances a mortgage on the real property, the lien is subordinate to the new
- 6            encumbrance.
- 7            b. The department shall release the lien in the circumstances described in s.
- 8            49.848 (5) (f).

(END OF INSERT 5-10)

INSERT 9-19

*↓*

*ins 9-19*

**SECTION 2.** 49.496 (3) (dm) of the statutes is created to read:

49.496 (3) (dm) All of the following apply to a lien under par. (c) that the department may not enforce because of par. (d):

1. If the decedent's surviving spouse or child who is under age 21 or disabled refinances a mortgage on the real property, the lien is subordinate to the new encumbrance.

2. The department shall release the lien in the circumstances described in s. 49.848 (5) (f).

(END OF INSERT 9-19)

**INSERT 14-6**

**SECTION 3.** 49.682 (2) (fm) of the statutes is created to read:

49.682 (2) (fm) All of the following apply to a lien under par. (e) that the department may not enforce because of par. (f):

1. If the decedent's surviving spouse or child who is under age 21 or disabled refinances a mortgage on the real property, the lien is subordinate to the new encumbrance.

2. The department shall release the lien in the circumstances described in s. 49.848 (5) (f).

(END OF INSERT 14-6)

**INSERT 20-1**

*↓*

*not* *Ins 20-1*

1 Unless the property is being transferred under s. 867.03<sup>✓</sup> or through formal or  
2 informal administration of the recipient's estate, *NO*  
*4*

(END OF INSERT 20-1)

INSERT 20-13

3 (bm) A person who receives a statement of claim from the department under  
4 par. (b)<sup>✓</sup> is entitled to and may, within 45<sup>✓</sup> days after the department sent the  
5 statement of claim, request a departmental fair hearing on the value of the property  
6 and the extent of the recipient's interest in the property. The value of the recipient's  
7 interest in the property shall be determined in the manner provided in s. 49.849<sup>✓</sup> (5c).

(END OF INSERT 20-13)

INSERT 24-4

8 *not* All of the following apply to a lien under par. (a)<sup>✓</sup> that the department may not  
9 enforce because of par. (b):<sup>✓</sup>

10 1. If the decedent's surviving spouse or child who is under age 21<sup>✓</sup> or disabled  
11 refinances a mortgage on the real property, the lien is subordinate to the new  
12 encumbrance.<sup>✓</sup>

13 2. The department shall release the lien in the circumstances described in s.  
14 49.848 (5) (f).<sup>✓</sup>

(END OF INSERT 24-4)

INSERT 26-4

15 *NO* If, after receipt of an affidavit under sub. (3)<sup>✓</sup>, a person who possesses property  
16 of a decedent does not transmit the property to the department or timely request a  
17 hearing, the department may bring an action to enforce its right to collect amounts

*↓*



*Ins 26-4 correct*

1 specified in sub. (2) (a) <sup>✓</sup> from the property or may issue an order to compel transmittal  
2 of the property. Any person aggrieved by an order issued by the department under  
3 this paragraph <sup>✓</sup> may appeal the order as a class 3 proceeding, as defined in s. 227.01  
4 (3) (c), <sup>✓</sup> under ch. 227 <sup>✓</sup> by filing a request for appeal, within 30 <sup>✓</sup> days after the date of  
5 the order, with the division of hearings and appeals created under s. 15.103 (1). The  
6 date on which the division of hearings and appeals receives the request for appeal  
7 shall be the date of service. The only issue at the hearing shall be whether the person  
8 has transmitted the property to the department. <sup>✓</sup> The decision of the division of  
9 hearing and appeals shall be the final decision of the department. <sup>✓</sup>

(END OF INSERT 26-4)

INSERT 29-10

10 *not* of a living trust, or if the predeceased spouse of a settlor *NO*

(END OF INSERT 29-10)

INSERT 29-19

11 *not* who, or whose predeceased spouse, received services, medical assistance,  
12 long-term community support services, or aid *NO*

(END OF INSERT 29-19)

INSERT 29-25

13 *not* The deadline for the department to file a claim for recovery under this  
14 subdivision <sup>✓</sup> shall be the date that is 4 months after the date of the trustee's notice  
15 under <sup>✓</sup> subd. 1.

(END OF INSERT 29-25)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0617/1dn

PJK:K:....

date

JLd

I removed the nonstatutory section<sup>✓</sup> and the initial applicability<sup>✓</sup> for recording the documents in the office of the register of deeds. Since the statute now says that the department may record a document when a recipient becomes eligible for, or at any time during the time that a recipient is eligible for, public assistance,<sup>✓</sup> neither the nonstatutory section nor the initial applicability section is needed.<sup>✓</sup>

Be sure to review the contested case language in proposed s. 49.849 (5r) (a)<sup>✓</sup> to make sure it does what you want.

There won't be any gap during which the department cannot recover for services. The current statutes will apply to recoveries with respect to deaths that occur before the delayed effective date, and the new statutes will apply to recoveries with respect to deaths that occur on and after the delayed effective date. Is this what you want?<sup>✓</sup>

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0617/1dn  
PJK:jld:jf

February 1, 2013

I removed the nonstatutory section and the initial applicability for recording the documents in the office of the register of deeds. Since the statute now says that the department may record a document when a recipient becomes eligible for, or at any time during the time that a recipient is eligible for, public assistance, neither the nonstatutory section nor the initial applicability section is needed.

Be sure to review the contested case language in proposed s. 49.849 (5r) (a) to make sure it does what you want.

There won't be any gap during which the department cannot recover for services. The current statutes will apply to recoveries with respect to deaths that occur before the delayed effective date, and the new statutes will apply to recoveries with respect to deaths that occur on and after the delayed effective date. Is this what you want?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

## Kahler, Pam

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**From:** Iwata, Yuko - DOA <Yuko.Iwata@wisconsin.gov>  
**Sent:** Tuesday, February 05, 2013 3:53 PM  
**To:** Kahler, Pam  
**Cc:** Gauger, Michelle C - DOA  
**Subject:** FW: estate recovery draft

Hi Pam,

Please see DHS' comments below regarding estate recovery. If you have any questions, please let me know.

Thanks,

**Yuko Iwata**  
Executive Policy and Budget Analyst  
Division of Executive Budget and Finance  
Department of Administration  
(608) 267 – 7980

---

**From:** Rosen, Lara K - DHS  
**Sent:** Tuesday, February 05, 2013 3:51 PM  
**To:** Iwata, Yuko - DOA  
**Cc:** Wasilewski, Daniel L - DHS; Garza, Jesus G - DHS; Emmerton, Kathleen M - DHS; Cunningham, Curtis J - DHS; Megna, Richard H - DHS; Forsaith, Andrew C - DHS  
**Subject:** FW: estate recovery draft

Hi Yuko,

In response to the estate recovery drafter's note:

- We are fine with the contested case language in proposed s. 49.849(5r)(a);
- We are also fine with the current delayed effective date approach - we appreciate the clarification.

Our only comment regarding the most recent draft relates to the Certificate of Clearance (Page 19, lines 8-16):

The previous draft asked whether one document could replace both the Certificate of Clearance and the Termination of Notice. We responded that we preferred two and suggested language. Currently, the Certificate of Clearance contains a statement that we will not be pursuing recovery of public assistance, where our comment limited our not pursuing recovery to property under this section. We are a little concerned that if we issue a Certificate of Clearance on one property, someone could construe it to extend to our not pursuing recovery against other property (both real and personal property).

There is a subtle difference between the way we plan to use the two documents. The termination of notice will primarily be used during an individual's lifetime. The certificate of clearance will be used after death to allow a transfer to take place, if we determine we have no claim, or if our claim has been paid, or if we place a lien against the property. The termination of notice document just ends the requirement that notice be given to the department, where the certificate of clearance allows the deceased's property to be transferred, etc.

What we want to convey on the certificate of clearance is that the department is permitting the deceased's property (that has a notice of transfer..... recorded against it) to be conveyed, transferred, etc. and that the department no longer requires that future transfers, encumbrances, etc. be reported to the department for that property. Something like:

(c) A document entitled "CERTIFICATE OF CLEARANCE," which shall provide notice that, with respect to property against which a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has been recorded, but against which a TERMINATION OF REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has not been recorded, no notice to the department is required when title to the property is transferred, an encumbrance is placed on the property, or an interest in the property is terminated, and that the department will not be pursuing a claim for recovery of public assistance permits transfer of title to, encumbering of, or termination of an interest in, the property.

Thanks for your help. Let me know if you or Pam have any questions on this issue – and please extend our appreciation to Pam for all of her work on this complex issue!

Lara